

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FRITZ DAIRY FARM, LLC,
ET AL.,

Plaintiffs,

Case No. 5:12CV1736

Akron, Ohio

Wednesday, September 3, 2014
11:30 a.m.

CHESAPEAKE EXPLORATION, LLC,
ET AL.,

Defendants.

TRANSCRIPT OF MOTION HEARING AND SETTLEMENT
BEFORE THE HONORABLE JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Warner Mendenhall
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For the Defendants: Timothy B. McGranor
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Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

2 THE COURT: For the record, the Court has before
3 it today Case Number 5:12CV1736. The case is Fritz Dairy
4 Farm, LLC, plaintiff, Mark Fritz and Michelle Fritz versus
5 Chesapeake Exploration, LLC, et al.

6 We're here today to address a motion filed by the
7 defendants in the matter. It's the defendants' renewed
8 motion for an order holding the plaintiffs in contempt.

9 It's document 43 as reflected in the docket.

11:37:05 10 Counsel for the plaintiff, are you ready to proceed?

11 MR. MENDENHALL: Yes, Your Honor.

12 THE COURT: On behalf of the defendants, are you
13 ready to proceed?

14 MR. MCGRANOR: Yes, Your Honor.

11:37:11 15 THE COURT: Counsel on behalf of the defendants,
16 in addition to your papers, what if any argument would you
17 like to present, or can you provide the Court any update
18 with regard to the status of the matter, efforts made to
19 bring this matter to a close?

11:37:24 20 MR. MCGRANOR: Certainly, Your Honor.

21 THE COURT: You can remain at the counsel table,
22 if you would like, since you have your papers there.

23 MR. MCGRANOR: Thank you, Your Honor.

24 Your Honor, since we filed the motion, I was contacted
11:37:34 25 last Friday by Mr. Mendenhall, counsel for the plaintiffs,

1 with a proposal to try to resolve this situation. We
2 analyzed that proposal and decided to decline it.

3 We are prepared to go forward. The deal that we would
4 like to have is the deal that we reached in December of 2012
11:37:54 5 and the deal that this Court ordered to be enforced back in
6 March of 2013, as affirmed by the Sixth Circuit.

7 This Court has already heard argument on this issue
8 once, ordered that the settlement be enforced, and we are
9 prepared today to have those documents signed. I have them
11:38:14 10 with me today. Those are the documents that were attached
11 to our original motion to enforce the settlement as ordered
12 by the Court.

13 THE COURT: Well, that might be kind of difficult
14 because Mr. Fritz isn't here. He's a party to the
11:38:27 15 settlement, I take it.

16 MR. MCGRANOR: He is, Your Honor.

17 THE COURT: Mr. Mendenhall.

18 MR. MENDENHALL: Your Honor, I can address that.
19 I bought with me a power of attorney executed from Mark
11:38:39 20 Fritz to Michelle Fritz.

21 Mr. Fritz has had some serious health conditions, so
22 we do have a power of attorney and she is prepared to
23 proceed today.

24 And she is -- she has power to act on her husband's
11:38:51 25 behalf and on behalf of Fritz Dairy Farm, LLC.

THE COURT: Well, counsel, what's your client's position regarding the motion here that sits before me? There has been an agreement that was reached. There has likewise been a decision by the Sixth Circuit based on your appeal. So it's fairly clear that the execution of the documents is in order.

MR. MENDENHALL: Your Honor, I have been seeking a way to cut through some of my client's objections. We have discussed the order and the settlement agreement that was issued on the record in this Court. My client is willing to abide by what was issued on the record with this Court.

What my client has an objection to are some specific parts of the language in the amendments and ratifications.

You know, in my experience -- and Mr. McGranor and I disagree on this a little bit, Your Honor. But, you know, I had attempted -- one of the issues we had discussed was just having a judgment entry from this Court that reflects what the settlement terms are that can be filed with the county recorder.

That would take away some of the objections that my client has in terms of the precise wording in the amendments and ratifications. And she is willing to proceed on that basis and abide by the order of this Court.

THE COURT: Well, counsel, what is the issue, if

1 you can try to help me with --

2 MR. MCGRANOR: The issue is, Your Honor, we need
3 to have these documents recorded. We want the documents
4 recorded in the form that they were agreed to. The
11:40:33 5 appropriate time to raise the objections that they had to
6 the documents were when they moved to enforce the settlement
7 and prior to this Court ordering that they sign these very
8 same documents.

9 THE COURT: So --

10 MR. MCGRANOR: We have now --

11 THE COURT: I'm sorry. Refresh my memory. So
12 the documents that were before me, are they identical to the
13 ones that you've presented for signature?

14 MR. MCGRANOR: Except for the dates, Your Honor.

11:40:56 15 THE COURT: Except for the dates.

16 So I previously ordered the enforcement of the
17 settlement. I'm just going back to review from -- I guess
18 thinking out loud here.

19 I previously ordered the enforcement of the settlement
11:41:06 20 under the terms and conditions as set forth in the items
21 that you presented or the documents you presented to the
22 defendant.

23 MR. MCGRANOR: Correct, Your Honor. Our motion
24 asked that this Court order the plaintiffs to execute the
11:41:18 25 documents that were attached to our motion to enforce the

1 settlement.

2 This Court ruled and ordered "Plaintiff shall
3 immediately take all steps necessary to execute the
4 settlement documents and comply with their terms." That was
11:41:32 5 the order that this Court entered. That was the order that
6 was appealed to the Sixth Circuit. And that was the order
7 that was affirmed.

8 THE COURT: What is the, as you understand it, is
9 the plaintiff's disagreement with the terms of the
11:41:45 10 documents?

11 MR. MCGRANOR: The plaintiffs have not
12 articulated any specific objections to the documents as
13 proposed other than the fact that the name Total as one of
14 the party lessees appears in the documents. They have not
11:41:57 15 identified any specific problems with those documents. Nor
16 did they identify any specific problems with those documents
17 during the motion to enforce stage.

18 The documents were negotiated specifically and agreed
19 to between me and Mr. Leiby at the time of
11:42:12 20 the -- immediately after the settlement.

21 THE COURT: Thank you, sir.

22 Mr. Mendenhall, have you conveyed to counsel for the
23 defendant, did you discuss with the attorneys for the
24 defendant the issues regarding documents and the language or
11:42:29 25 terms? Have you brought that to their attention before

1 today?

11:42:43 5

2 MR. MENDENHALL: Your Honor, this has been a
3 fairly complicated process for a period of time. I was
4 relieved from representing my clients while this case was on
5 appeal, and I believe there are some other matters there.

6

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Last week I was contacted by Michelle, and I
immediately began to work on the case to try to resolve the
contempt issue.

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11:42:57 10

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But I have not communicated the details. I thought
there were several other ways that this could be resolved,
including a judgment entry by this Court.

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11:43:10 15

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THE COURT: Well, that's not going to be
sufficient. Obviously the defendants, based on the nature
of the case, based upon the issues -- an interest in real
estate is at issue here -- the defendants are going to be
permitted, they have the right, to file and cause to be
filed the documents that reflect the agreement of the
parties as I previously ordered.

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11:43:29 20

Now, Mrs. Fritz, I want to proceed with caution here.

You have -- basically you have lost on appeal.

21

MS. FRITZ: I understand, sir.

22

23

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THE COURT: There is, at this point, in terms of
negotiation, there really is very little room for any
negotiation. You are bound by a settlement agreement.

11:43:48 25

MS. FRITZ: Correct.

1 THE COURT: That I ordered enforced.

2 MS. FRITZ: Um-hum.

3 THE COURT: That I know you're not happy with the
4 outcome. I understand that. But at this point, I need to
11:43:59 5 give you fair warning that if you refuse to execute
6 documents and the agreements that have been ordered by me
7 and as affirmed by the Sixth Circuit -- the only Court above
8 the Sixth Circuit is the U.S. Supreme Court, and the time I
9 suspect has run for any appeal there, nor is it likely
10 they're going to review this issue, the issues in this case.

11 So as unhappy as you might be, to resist executing
12 documents to carry out the agreement is going to put you at
13 risk of thousands, if not tens of thousands of dollars.

14 Because if the plaintiffs establish -- excuse me, the
11:44:42 15 defendants, establish their right -- are you hearing me?
16 Ma 'am?

16 Ma 'am?

17 MS. FRITZ: Um-hum. Yes, sir.

18 THE COURT: If they establish their right to
19 enforce this agreement -- they've already established that.
11:44:54 20 Let me rephrase that. They've already established that
21 there is an agreement. They have a right to have the
22 agreement enforced. And the agreement that they have a
23 right to enforce is attached, is included in the filings in
24 this court.

11:45:06 25 And if you continue to resist carrying out that

1 agreement, then they're asking me to hold you in contempt.
2 Contempt powers include, at the extreme, a period of
3 incarceration, at the extreme, custody. Or worse than that,
4 perhaps, or not worse but certainly a consequence can be
11:45:32 5 tens of thousands of dollars which they would be entitled
6 to, and for attorney fees and other costs, which, if you
7 want to refuse to pay that, they could attach that as to a
8 lien on your property. I mean, there is -- that is at the
9 extreme.

11:45:50 10 But I am just trying to say to you, ma'am, with all
11 due respect, and encourage you, at this point the battle is
12 pretty much over. And resisting further may either be
13 futile, and it certainly may be very costly.

14 And so I would strongly encourage you -- you can meet
11:46:10 15 with Mr. Mendenhall. You can discuss with him -- again,
16 maybe you've done that before today. But if need be, we're
17 going to go forward with a hearing. If they establish that
18 indeed you have refused to sign the documents as I have
19 ordered, as the Sixth Circuit has affirmed, as part of your
11:46:30 20 agreement, then the next thing left for me to do is to
21 decide a consequence. And I really don't want to do that.

22 MS. FRITZ: I understand, sir.

23 THE COURT: This should be something that should
24 have been resolved a number of weeks ago. It's unfortunate.
11:46:41 25 I know you're unhappy. There is certainly some positives to

1 this in terms of the economic circumstances for you.

2 But if you don't -- but if you wish to resist further,
3 then it's going to be very challenging for me and for you,
4 and they're going to be clamoring for me to do something
11:47:00 5 that I may not want to do. If I don't want to do it, they
6 may go to the Sixth Circuit and ask them to do it.

7 MS. FRITZ: I understand.

8 THE COURT: Which means more money, more costs,
9 and more money that they're going to be asking for.

10 11:47:11 And I'm not talking about a few hundred dollars,
ma'am.

12 MS. FRITZ: Oh, I understand.

13 THE COURT: I'm talking about thousands of
14 dollars. Maybe tens of thousands of dollars.

15 11:47:18 So why don't you take few minutes. You talk to Mr.
Mendenhall. They have the documents available. And if
16 17 you're not able to work it out, then I'm going to come back
18 on the bench and then we're going to conduct this hearing.

19 20 And I'm going to be open-minded and fair about it, but
the issues are somewhat limited based on where I'm at now,
21 where this case has gone.

22 So take some time.

23 24 Counsel, why don't you talk to Mr. Mendenhall. If
there is some minor matter that you might be able to give on
11:47:45 25 a bit and get this cleared up and cleaned up in a very

1 expeditious way, I would strongly encourage you to do that.
2 If it's a matter of wording or language or something that
3 doesn't affect your substantial rights in this lease --

4 MR. MCGRANOR: Understood, Your Honor.

11:47:58 5 THE COURT: -- let's work it out.

6 All right. I'll step off.

7 My law clerk here, Mr. Little, will work with you.

8 Ma'am, take some time. Talk to your attorney. Talk
9 to the other side. And see if you can't work this out.

11:48:08 10 All right? Please.

11 Mr. Mendenhall, any questions?

12 MR. MENDENHALL: No. Thank you, Your Honor.

13 THE COURT: Please, ma'am. Take some time. Work
14 it out.

11:48:17 15 MS. FRITZ: Yes, I understand.

16 THE COURT: I know you're running a dairy farm.
17 I know how hard it is. So just take some time and clear up
18 this. Thank you very much.

19 I'll come back when you've had a chance to confer.

11:48:28 20 If you need a separate room, my law clerk will provide
21 you with separate accommodations so you can meet and discuss
22 privately with each other, my conference room, what have
23 you, whatever space you might need.

24 All right. Thank you very much, please.

11:48:41 25 (Recess taken, 11:45 a.m. until 1:45 p.m.)

1 THE COURT: Counsel, it's my understanding after
2 our discussions here this morning that the parties have met
3 and conferred and that there is a resolution of the
4 outstanding motion.

13:44:56 5 Counsel for the defendants, is that correct?

6 MR. MCGRANOR: That is correct, Your Honor.

7 THE COURT: And would you set forth the terms of
8 whatever agreement that you have that might resolve the
9 matter? And then I'll hear from counsel for the plaintiff
10 and make certain that there is an agreement here.

11 MR. MCGRANOR: We have made some modifications to
12 the amendments and ratifications that were previously sent
13 to the plaintiffs, specifically relating to some water
14 testing language.

13:45:20 15 We have made those changes. We have revised the
16 documents. Those documents were then printed in your
17 chambers. We have executed those documents.

18 At least plaintiffs have executed those documents, and
19 those have now been notarized. And I have those documents
20 here.

21 THE COURT: And you intend on executing them from
22 your side as well --

23 MR. MCGRANOR: Correct, Your Honor.

24 THE COURT: -- and then finalizing this
25 agreement?

1 MR. MCGRANOR: That's correct, Your Honor.

2 THE COURT: And you seek no further action
3 against the plaintiffs, as I understand it?

4 MR. MCGRANOR: That is correct.

13:45:46 5 THE COURT: All right.

6 Mr. Mendenhall, on behalf of the plaintiffs, please.

7 MR. MENDENHALL: That's correct, Your Honor.

8 There were a couple of matters regarding water and
9 water testing, and defendants have worked with us to get
10 that resolved. The agreement and everything is in writing.
11 It's signed by my client.

16 How's that?

17 MR. MCGRANOR: That's fine, Your Honor.

18 THE COURT: I will require no further paperwork,
19 nothing of that matter. We will just put up an entry that
13:46:22 20 the motion has been dismissed and settled based upon the
21 agreement of the parties.

22 Ms. Fritz, thank you very much. I appreciate your
23 cooperation. And good luck in the future. I know you have
24 not been completely happy with the way the matter is
13:46:34 25 resolved, but hopefully you can move forward.

1 All right. Thank you very much. That's how we will
2 proceed.

3 Have a good day, all. Have a safe drive home.

4 MR. MENDENHALL: Thank you, Your Honor.

5 MR. MCGRANOR: Thank you, Your Honor.

6 (Proceedings concluded at 1:48 p.m.)

7

C E R T I F I C A T E

9

10 I certify that the forgoing is a correct
11 transcript from the record of proceedings in the
12 above-entitled matter.

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S/Caroline Mahnke

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